

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

RICHARD SCHULTZ

PLAINTIFF

VS.

CIVIL ACTION NO. 3:04CV907LN

**TELECORP PCS AMENDED AND
RESTATEED CHANGE OF CONTROL
SEVERANCE PLAN and AT&T
WIRELESS SERVICES, INC.**

DEFENDANTS

ORDER

This matter came before the court on a review of the docket, which revealed that a Motion to Strike Jury Demand had been filed on March 21, 2005, but has not been resolved by the court. The basis of the Motion to Strike is the Defendants' contention that a jury trial is not available to the Plaintiff in this action seeking benefits based upon the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§1001 through 1461 (1999 & Supp. 2005). *Provident Life & Acc. Ins. Co. v. Sharpless*, 364 F.3d 634, 639-40 (5th Cir. 2004). The Plaintiff recognizes this Fifth Circuit precedent, but argues that the United States Supreme Court, if it were called upon to resolve this issue, would recognize a right to a jury trial in an ERISA case. However, the cases cited by the Plaintiff as recognizing such a right were not decided in the context of ERISA, and the court finds that they do not support the argument for a jury trial. Therefore, the Motion to Strike will be granted.

IT IS, THEREFORE, ORDERED that the Defendants' Motion to Strike Jury Demand is hereby **granted**.

IT IS SO ORDERED, this the 9th day of January, 2006.

S/Alfred G. Nicols, Jr.

UNITED STATES MAGISTRATE JUDGE